

STATE OF MICHIGAN  
COURT OF APPEALS

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GOYETTE MECHANICAL COMPANY, INC.,

Plaintiff-Appellant,

v

WASHTENAW COMMUNITY COLLEGE,

Defendant-Appellee.

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UNPUBLISHED

November 18, 2003

No. 238627

Washtenaw Circuit Court

LC No. 00-000287-CK

Before: Neff, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Our review of the grant or denial of summary disposition is de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The construction and interpretation of a contract presents a question of law that is reviewed de novo. *Bandit Industries, Inc v Hobbs Int'l, Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001). The goal of contract construction is to determine and enforce the parties' intent from the plain language of the contract itself. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). If contract language is clear and unambiguous, its meaning presents a question of law for the court to determine. *UAW-GM Human Resource Center v KSL Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). On the other hand, where the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *Id.* Where a contract is not ambiguous, evidence of custom and practice is inadmissible. *Independence Twp v Reliance Building Co*, 175 Mich App 48, 54; 437 NW2d 22 (1989). Furthermore, the duty to interpret and apply the law is allocated to the courts, not the parties' expert witnesses. *Hottman v Hottman*, 226 Mich App 171, 179; 572 NW2d 259 (1997). The failure to define a contract term does not render the contract ambiguous. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Rather, the terms of a contract must be interpreted in accordance with their commonly used meanings. *Id.* The court may refer to dictionary definitions when appropriate to ascertain the precise meaning of a particular term. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000).

Plaintiff's request for monetary damages based on delay, causing a breach of contract, is without merit. According to the plain language of the unambiguous contract, extension of time was the remedy for any delay. *Old Kent, supra*. There was no evidence of active interference of

the contract by defendant or other contractors. *Phoenix Contractors, Inc v General Motors Corp*, 135 Mich App 787, 792; 355 NW2d 673 (1984).<sup>1</sup> Plaintiff's claim for "extra work" including supplies and painting also fails because the plain language of the contract does not support the contention that these claims were outside the scope of plaintiff's duties. The attempt to characterize the claims for damages as "delay" or "non delay" or "extra work" to fall outside the scope of the contract is without merit. We are not bound by the plaintiff's choice of labels for alleged damages because to do so would exalt form over substance, *Johnston v City of Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989), and an exercise in semantics will not create a factual issue precluding summary disposition. *Camden v Kaufman*, 240 Mich App 389, 397; 613 NW2d 335 (2000).

Furthermore, the allegations that questions of fact were created by the affidavit of plaintiff's expert and the failure to define terms in the contract are without merit. The construction and interpretation of the contract presents a question of law for this court, not for plaintiff's expert, *Hottman, supra*, and the omission of a definition does not create an ambiguity where terms may be given their ordinary and plain meaning or dictionary definition. *Henderson, supra*; *Morinelli, supra*. Lastly, plaintiff's attempt to recoup damages based on equitable principles such as unjust enrichment fail because a contract cannot be implied where there is an express contract governing the same subject matter. *Barber v SMH (US), Inc*, 202 Mich App 366, 375-376; 509 NW2d 791 (1993).

Affirmed.

/s/ Janet T. Neff  
/s/ Karen M. Fort Hood  
/s/ Stephen J. Borrello

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<sup>1</sup> In conjunction with this argument, plaintiff contends that defendant misrepresented the status of the construction and an existing delay. Plaintiff's complaint did not plead a cause of action based on misrepresentation or fraud. In any event, "there can be no fraud where the means of knowledge regarding the truthfulness of the representation are available to the plaintiff and the degree of their utilization has not been prohibited by the defendant." *Webb v First of Michigan Corp*, 195 Mich App 470, 474; 491 NW2d 851 (1992). Review of the notes maintained by plaintiff's representative revealed that the company would pursue the current status of construction from Barton Malow, and there is no indication that defendant precluded any consultation regarding the construction status.